

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
CASE NO. 23-cr-80219-AMC-1

UNITED STATES OF AMERICA, Fort Pierce, Florida  
Plaintiff, March 5, 2024  
vs. 1:38 p.m. - 2:23 p.m.  
MICHAEL GORDON DOUGLAS,  
Defendant. Pages 1 to 32

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TRANSCRIPT OF MOTION FOR RECONSIDERATION  
BEFORE THE HONORABLE AILEEN M. CANNON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

U.S. ATTORNEY'S OFFICE  
GREGORY SCHILLER, ESQ.  
500 S. Australian Avenue  
Suite 400  
West Palm Beach, Florida 33401

FOR THE DEFENDANT:

LAW OFFICE OF JOHN R. HOWES  
JOHN R. HOWES, ESQ.  
110 SE 6TH STREET  
SUITE 1700  
FORT LAUDERDALE, FLORIDA 3301  
  
LAW OFFICES OF JOHN D. KIRBY, APC  
JOHN D. KIRBY, ESQ.  
401 W. A STREET  
SUITE 1150  
SAN DIEGO, CALIFORNIA 92101

STENOGRAPHICALLY REPORTED BY:

LAURA E. MELTON, RMR, CRR, FPR  
Official Court Reporter to the  
Honorable Aileen M. Cannon  
United States District Court  
Fort Pierce, Florida

1 (Call to the Order of the Court.)

2 THE COURT: Good afternoon. You may be seated, unless  
3 you are addressing the Court.

4 Let's call the case, please.

5 COURTROOM DEPUTY: United States of America vs. Michael  
6 Gordon Douglas, Case Number 23-cr-80219.

7 Will the parties please make your appearance, starting  
8 with the government.

9 MR. SCHILLER: Good afternoon, Your Honor. Gregg  
10 Schiller on behalf of the United States, and with me is  
11 Homeland Security Investigations Special Agent Isha Rama.

12 THE COURT: Good afternoon to you both.

13 MR. SCHILLER: Good afternoon.

14 AGENT: Good afternoon.

15 MR. KIRBY: Good afternoon, Your Honor. John Kirby on  
16 behalf of Mr. Douglas. He is present in custody. Also, I'm  
17 appearing pro hac vice. Also, Mr. Howes who is a member of the  
18 Bar here.

19 MR. HOWES: Good afternoon, Your Honor. Good to see  
20 you again. It's been a while.

21 THE COURT: Good afternoon to all of you. Good  
22 afternoon, Mr. Douglas. And, good afternoon, Mr. Kirby.

23 Who is here for probation?

24 THE PROBATION OFFICER: Good afternoon, Your Honor.  
25 Claire Spille on behalf of U.S. Probation.

1           THE COURT: All right. We are here following the  
2 government's appeal of a bond order entered in the Southern  
3 District of California by Magistrate Judge Berg. I have  
4 reviewed the full record, including the transcripts from the  
5 two hearings, the first in December at which detention was  
6 ordered, along with the subsequent reconsideration hearing when  
7 the magistrate judge entered a bond in the amount of, I  
8 believe, \$100,000 personal surety bond, secured by a trust deed  
9 to the United States, with the co-signature and additional  
10 conditions. I understand that there were some exhibits  
11 provided by defense counsel to the Court.

12           Ms. Cassisi, I don't actually have a copy of those  
13 defense exhibits.

14           Mr. Kirby, do you have an additional copy of the  
15 medical records, I think?

16           MR. HOWES: Your Honor, I have given them to your  
17 clerk.

18           THE COURT: Okay.

19           MR. HOWES: I have given the government an entire set  
20 of those particular documents. We've culled down the ones that  
21 are relevant to what Mr. Kirby is going to address with you  
22 today. But the government has a full set of them.

23           THE COURT: Okay. So we have some medical records that  
24 the defense wishes to introduce.

25           Now, Mr. Kirby or Mr. Howes, beyond the medical

1 records, do you have any additional evidence you wish to  
2 introduce into the record for purposes of this hearing?

3 MR. KIRBY: No, Your Honor.

4 THE COURT: Okay. Let me turn to Mr. Schiller then.

5 Beyond what is already in the record, are you  
6 contemplating an evidentiary hearing of any kind for purposes  
7 of this appeal?

8 MR. SCHILLER: I am not, Your Honor.

9 THE COURT: Okay. So you're relying on the record as  
10 it currently stands; is that correct?

11 MR. SCHILLER: Yes, Your Honor. I believe, that's what  
12 we ought to and is appropriate to be done in this matter.

13 THE COURT: Do you have -- do you have any objection to  
14 the Court's consideration of the medical records?

15 MR. SCHILLER: No, I don't.

16 THE COURT: Thank you. Okay.

17 All right. Well, then I will reopen this hearing from  
18 an evidentiary standpoint only for the limited purpose of  
19 receiving the supplemental exhibits filed by the defense,  
20 without objection from the government. And as far as I can  
21 tell, these are health records from January of this year. You  
22 can provide more clarification for what they reveal in your  
23 view, Mr. Howes or Mr. Kirby.

24 But with that, let me turn, first, to the government,  
25 because it is the government's appeal for argument on the

1 motion.

2 MR. SCHILLER: Thank you, Your Honor. If I may  
3 approach the podium.

4 THE COURT: Yes.

5 MR. SCHILLER: Thank you, Your Honor.

6 In fairness, I don't have too much more to add than  
7 what's in the government's brief. I believe I have touched on  
8 most of the major points, but I think that what's important for  
9 this Court to consider and what we're doing here today is what  
10 actually happened in California, which is almost quite an  
11 anomaly.

12 The Court held the defendant on pretrial detention, and  
13 when the magistrate judge issued that order, he did so citing  
14 the following reasons for danger to the community and risk of  
15 flight. First, he found that there was clear and convincing  
16 evidence that the defendant is a danger, and by a preponderance  
17 of the evidence, that there is a serious risk that he would  
18 flee.

19 And then he explained why, checking off boxes that are  
20 on the preprinted form, including the weight of the evidence  
21 against the defendant is strong, but it is the least important  
22 factor. That appears to be unique to the Southern District of  
23 California. Our prepared -- pre-prepared bond orders here in  
24 the Southern District of Florida do not say that last part of  
25 it. And, in fact, the weight of the evidence is a significant

1 factor, if not one of the most important ones, in considering  
2 bond in the 11th Circuit.

3 And then the magistrate judge went over and clicked off  
4 several other boxes regarding why the defendant should be  
5 detained, including subject to a lengthy period of  
6 incarceration, if convicted; his prior criminal history; lack  
7 of stable employment; lack of significant community or family  
8 ties to the Southern District of Florida; prior attempts to  
9 evade law enforcement; and prior sex offense conviction.

10 Then the defendant hired private counsel who filed a  
11 subsequent bond motion after this had been decided, and  
12 essentially was arguing a few factors: That the defendant had  
13 suffered an injury in the jail; that his mother -- his aunt had  
14 suffered an injury since he had been arrested; and he had some  
15 other medical issues. And at that bond hearing, the incident  
16 at the jail, there was no evidence presented about it, other  
17 than argument from counsel to suggest that the defendant had  
18 suffered some injury.

19 The government even countered that fact by advising  
20 that they had -- and they provided to the Court records from  
21 the jail, indicating that the defendant went to medical, but  
22 was fine to return back to his cell as long as he had a  
23 different roommate, a cellmate, and that was it. There was no  
24 major injuries that he suffered, nothing that was presented.

25 In regards to the aunt, the defendant, through counsel,

1 had suggested to the Court that he was the one that had to take  
2 care of his aunt, and now that she had suffered additional  
3 injury, who would take care of her? Well, in fact, that point  
4 had really already been brought up at the first bond hearing,  
5 that he was the caretaker of his aunt. And the fact that she  
6 suffered injury subsequent to his being arrested, really had no  
7 effect on whether or not he would be a danger to the community  
8 or a flight risk. And the final issue, regarding his medical  
9 situation, that was already brought up at the initial bond  
10 hearing.

11 So the government essentially rested on the fact that  
12 there was either A, nothing new; or B, nothing material to the  
13 question of whether or not bond should be altered from the  
14 original decision in this case. And without really saying why,  
15 the magistrate judge reversed his own opinion.

16 THE COURT: I think as far as I can tell, the rationale  
17 is as follows, he says: "I took the new information as the  
18 illness to his mother and his back/neck injury, so I am  
19 reconsidering, and I'm going to set bond in this case." So I  
20 think maybe that those were the sources of information that  
21 counselled his decision.

22 MR. SCHILLER: Yes, Your Honor. I'm sorry. I  
23 misspoke. I mean, obviously, the judge relied on the  
24 information provided by defense counsel, Mr. Kirby, and took  
25 that as the reasons for now issuing bond.

1           But those reasons were not said to have been new and  
2 unknown or, B, material. And even if they were, it is still a  
3 question of comparing all of the other elements for bond. And  
4 as the judge rightfully laid out all the reasons for detaining  
5 Mr. Douglas originally, he didn't go back to say, well, these  
6 new issues, if they were, in fact, new, which I don't submit  
7 they were, somehow overcome everything else that I have already  
8 found that makes him a danger and a flight risk.

9           And so for those reasons, there was really no reason  
10 for the Court to overturn its original decision and why the  
11 government is asking this Court to reimpose the pretrial  
12 detention order.

13           I will also submit that there were a couple of  
14 discrepancies that I wanted to bring to the Court's attention.  
15 And defense counsel, during the motion for bond, in addition to  
16 his filing of his motion, included an affidavit signed by the  
17 defendant. And in doing so -- and I believe I included it as  
18 an attachment to my motion, and I apologize for the pagination  
19 and the Bates-stamping at the top. You know, when a document  
20 is filed and then refiled, it kind of goes right over itself.  
21 There is no way to fix that.

22           But in the affidavit by Michael G. Douglas, in which  
23 he -- which he signed on January 22nd, the last line item says:  
24 "I have not used any illicit drugs since 2011." But the  
25 pretrial services report done in California that we've all been



1 provided clearly indicates that the defendant relayed to  
2 probation that he had been doing cocaine as recent as within  
3 the past week before his arrest. And there are other drugs  
4 mentioned as well. So that was a discrepancy. The other --

5 THE COURT: "Discrepancy" is an interesting word for  
6 that.

7 MR. SCHILLER: Thank you, ma'am.

8 I also want to direct the Court's attention to a  
9 description about the day of the defendant's arrest. Because  
10 in defense counsel's reply to the government's appeal, they  
11 wrote on page 2 -- and I will just read it, for the record.

12 At the bottom of page 2, this is docket entry 15 in our  
13 case, "Mr. Douglas, as he was driving down Interstate 15,  
14 noticed that he was being followed by two late-model SUVs and  
15 believed that these vehicles might belong to members of the  
16 drug gang that was after Crystal Lnu." That's the passenger in  
17 his vehicle.

18 "These vehicles then attempted to stop Mr. Douglas'  
19 vehicle. The vehicles did not use any red-and-blue flashing  
20 lights or sirens to identify them as law enforcement.  
21 Mr. Douglas, fearing that the occupants of the vehicle might  
22 harm him, flashed a \$2 plastic hand grenade to the occupants.  
23 Once the occupants identified themselves, Mr. Douglas  
24 surrendered peacefully."

25 Nothing could be farther from the truth. This

1 incident, if I could be blunt with the Court, Mr. Douglas came  
2 within seconds of losing his life, because as he held this what  
3 looked like a real grenade in his hand in the car and was  
4 ordered repeatedly for not just a second or a few seconds but  
5 minutes to put down his hands, put down the grenade, he had  
6 snipers -- well, they weren't actually certified snipers, but  
7 he had law enforcement with laser lights pointed at his head,  
8 ready to shoot him because there were people around him, there  
9 was law enforcement around him, and he was holding on to that  
10 grenade, not for a split-second, and then putting it down  
11 following commands, it took a while.

12           There was a hostage negotiator on scene. There was an  
13 entire swarming of Homeland Security and local law enforcement  
14 officers clearing the area, making sure nobody would get hurt.  
15 And it was only, finally, that he put down the device and then  
16 he came out and, you know, said to the officers, What's going  
17 on? What's this all about?

18           They clearly identified themselves by -- by identifying  
19 that they were police, with their names across their vests.  
20 This was an extremely volatile situation. Dangerous not only  
21 for the law enforcement officers but the civilians in the area.

22           And when we talk about danger and we look at the facts  
23 of the case, what was found in the defendant's vehicle -- and  
24 this was made clear at the initial bond hearing -- are all of  
25 the items that the defendant was going to bring to his date

1 with the undercover agent and her notional 8-year-old child.  
2 Everything from toys -- a stuffed animal to sex toys to  
3 lingerie. Everything he described that he was going to bring  
4 was in the vehicle.

5 So the government is hard-pressed to understand how the  
6 information provided at the subsequent bond hearing or any  
7 medical situation that the defense presents to this Court  
8 somehow could overcome the presumption of detention. And even  
9 if it were that somehow it overcomes the standards of clear and  
10 convincing evidence and a preponderance of the evidence for  
11 flight and dangerousness to the community.

12 THE COURT: So you're maintaining both prongs; is that  
13 correct?

14 MR. SCHILLER: Technically all three, Your Honor. The  
15 presumption as well as flight and danger to the community.  
16 Yes.

17 THE COURT: But you're moving for detention on the two  
18 bases, flight and danger?

19 MR. SCHILLER: Just as we did out in California, yes,  
20 ma'am. I'm arguing nothing different than was originally  
21 argued for which the magistrate judge already set pretrial  
22 detention, and then reversed it based upon what I would suggest  
23 are things that were already known, except for maybe the injury  
24 to the aunt, and things that were not material to the question  
25 of detention. And those are the standards which we ask this

1 Court to apply, as it should.

2 THE COURT: So at the initial hearing the government  
3 proceeded by proffer; correct? There was no agent testimony?

4 MR. SCHILLER: Correct, Judge. My understanding is in  
5 the Southern District of California both sides typically  
6 proceed by proffer and do not present witnesses. And the Court  
7 receives it that way, and the parties proceed that way as well.

8 THE COURT: All right. So the proffer in California  
9 was that he had fled and that the officers had engaged their  
10 lights and that he, nevertheless, engaged in a chase with  
11 agents. The theory that he wasn't sure whether he was being  
12 pursued by law enforcement, that, I believe, was raised by the  
13 defense.

14 Do you know if the magistrate ever made a finding as to  
15 sort of what version he believed with respect to whether he was  
16 actually evading arrest, fleeing, or whether he was under some  
17 good faith misimpression.

18 MR. SCHILLER: I'm not going to argue that the good  
19 faith misimpression was not a legitimate reason for him. I  
20 don't -- I don't believe law enforcement, when they were  
21 following him, because they weren't chasing him, they were  
22 following him in a surveillance mode, had any kind of lights  
23 and sirens on, and they were using undercover vehicles.

24 But when they finally decided to stop him, that's when  
25 he did not surrender initially, and that went on for several

1 minutes, again, as the description I described above -- before.

2 THE COURT: The description about the volatile  
3 situation in the parking lot and all of that, was that  
4 proffered by the AUSA in California?

5 MR. SCHILLER: Yes, ma'am.

6 I believe on page 3 -- let me just see if I can correct  
7 my notes. Yes, I believe it's on page 3 and 4 of the  
8 transcript from the original hearing.

9 "Upon being stopped, the defendant proceeded to display  
10 a grenade while an adult woman in the car, she apparently fell  
11 out of the car screaming, 'He's going to kill us. He's going  
12 to kill us.' After the bomb squad was called out, they  
13 determined the grenade was, in fact, a replica."

14 Probably the only parts of the scenario that were not  
15 detailed were the minutes of time that went on as the law  
16 enforcement officers are ordering commands to "put down the  
17 device, get out of the car, show us your hands," none of which  
18 the defendant followed, and he stayed in the car until finally  
19 obeying the commands.

20 To that point, officers had to display flash-bangs to  
21 try to disorient the individual. That really didn't have much  
22 of an effect either.

23 THE COURT: Was there any offer of contrary proof with  
24 respect to what happened once they attempted to stop the car in  
25 the parking lot?

1 MR. SCHILLER: From the defense's perspective?

2 THE COURT: That's correct.

3 MR. SCHILLER: I would have to go back to the  
4 transcript and look. If the Court will just give me a moment.

5 THE COURT: I don't see a particular factual challenge  
6 to that part, other than stressing that the grenade was  
7 ultimately determined to be fake.

8 MR. SCHILLER: The only thing -- and I agree with  
9 Your Honor.

10 The only thing I can find is on page 10 of the original  
11 transcript, and I filed this at docket entry 10-3. On line 4  
12 of the transcript the public defender says, "And as to the  
13 alleged flight from the officers, there are factual questions  
14 at issue as to whether there were -- these were marked cruisers  
15 or that he was aware that these were police officers that were  
16 chasing him at the moment in time."

17 But, again, the real confrontational issue happens once  
18 they finally do stop him.

19 THE COURT: Okay. Now, as far as just sort of the big  
20 picture, the indictment charges, I believe, it is seven counts.

21 Are they all distribution counts?

22 MR. SCHILLER: They are, ma'am. And each of them  
23 carries a minimum mandatory of 15 years to a maximum of  
24 40 years.

25 THE COURT: And the guidelines estimated at this point

1 are still -- is it 210 or so from the original calculation?

2 MR. SCHILLER: At the bottom of the guidelines, yes,  
3 ma'am, that is the government's calculation. I have not  
4 confirmed it with probation.

5 Judge, we know -- and this was expressed at the  
6 original bond hearing -- the defendant was previously convicted  
7 in 2011 of having an online conversation with another  
8 undercover agent and distributing child pornography at that  
9 point as well. That happened back in 2006 or so. But by the  
10 time the case finally made its way into the court, and he was  
11 convicted, it was 2011 already.

12 It was then in 2021, after being a sex offender for  
13 10 years, that a judge in California decided that the defendant  
14 had been rehabilitated, and could be taken off the sex offender  
15 registry. These chats began with the undercover agent in 2023,  
16 just a little more than two years later.

17 THE COURT: As far as the ties to the district, is that  
18 inquiry, in your view, confined to the district here, the  
19 charging district, or is it a kind of broader view without ties  
20 to any district?

21 MR. SCHILLER: Well, I think it's -- I think it can be  
22 tied to both districts in all fairness. But I think it's  
23 primarily tied to here, because it's this Court that's going to  
24 be releasing the defendant and in hopes -- if the Court were to  
25 grant a bond. And the hope would be that, A, he doesn't commit

1 any -- he is not a danger, not only in his home community but  
2 this community, but that he is not a flight risk from this  
3 Court.

4 So Your Honor releasing him, the question is, is he a  
5 flight risk from this Court? If he is not living here, if he  
6 doesn't have ties here, what binds him to our district? He  
7 will return to California. And this Court will have little  
8 ability to initiate anything on him immediately. I understand  
9 things can be done quickly, but without having him here in this  
10 district, it seems tenuous at best.

11 The defense did mention in their reply brief that he  
12 has family here, somewhere in Florida. They don't mention  
13 specifically where, or whom, and to what those relationships  
14 are. But, again, without having any of that information,  
15 again, none of which was presented at the first bond hearing,  
16 none of which was presented at the second bond hearing, we  
17 think the pretrial detention order was rightfully entered  
18 originally.

19 THE COURT: Can you explain to me how this would work,  
20 a trustee to the United States on real property approved by a  
21 federal judge?

22 MR. SCHILLER: I cannot, ma'am.

23 THE COURT: Okay.

24 MR. SCHILLER: And I can't only because I have never  
25 been part of such a bond condition here in the Southern



1 District of Florida.

2 THE COURT: All right. Okay. Thank you.

3 MR. SCHILLER: Thank you, ma'am.

4 THE COURT: All right. Who will be presenting evidence  
5 on behalf of Mr. Douglas?

6 MR. KIRBY: I will, Your Honor.

7 THE COURT: All right. Thank you.

8 MR. KIRBY: May I approach the podium?

9 THE COURT: Yes.

10 MR. KIRBY: Your Honor, initially I would note, and I  
11 don't want to spend a lot of time on it, but what the  
12 government referenced as to what happened after Mr. Douglas was  
13 approached by law enforcement, nothing about snipers or  
14 infrared vision goggles or anything like that was presented at  
15 either of the hearings.

16 Basically, what happened was Mr. Douglas erroneously  
17 thought he might have been tracked by some drug gang, and made  
18 a bad decision to raise up a replica grenade for a few minutes.  
19 When it became clear it was law enforcement, he  
20 immediately -- and this is what the record says, not what  
21 is -- just said today, but what the record says -- he -- he  
22 surrendered. And that's indeed what happened. There was no  
23 volatile situation. At least not what's in the record. It  
24 doesn't say that. What the prosecutor stated doesn't say that  
25 either. Mr. Douglas indeed surrendered.

1           But, more importantly, and what really is the crux of  
2   why I'm here, Mr. -- and why the magistrate judge, upon  
3   reconsideration, did grant him bond, he does have strong ties  
4   to San Diego, and I think that is what this Court should  
5   consider because he will be staying in San Diego.

6           And it's not as though he's going to be in a foreign  
7   jurisdiction where the Court does not have the ability to have  
8   him arrested. If there is any problem with his bond, if he  
9   doesn't -- you know, if he doesn't abide by the conditions,  
10   it's not as though he is going to go to Mexico. He has no ties  
11   to Mexico, no ties to any other jurisdiction that's outside of  
12   the Court's purview. And I think that is what Your Honor  
13   should look at.

14           He is very close to his mother. He is very close to  
15   his aunt. He doesn't have anywhere else to go. He -- if he is  
16   released, he will stay in San Diego. He is willing to have  
17   whatever restrictions the Court wants to place, house arrest,  
18   ankle monitor, have all computers taken from his home, and any  
19   other restriction the Court wants.

20           The reason that he wants to be out, and it's -- it's  
21   the singular consideration, is because of his -- his physical  
22   condition. He has spinal stenosis that has been -- it's in the  
23   court records. He has been told by two different doctors that  
24   if he does not have surgery almost immediately, he could, at  
25   any moment, become paralyzed or even die. If he sneezes wrong,

1 if he coughs wrong, if he falls, he could immediately become  
2 paralyzed. This is not, you know, sort of, a, well, this might  
3 happen; this is going to happen if he does not have surgery.

4 Now, I spoke to the prosecutor yesterday about that,  
5 who suggested, well, maybe he can have surgery in custody. He  
6 has met with a nurse of some sort at Pierce County Jail who  
7 basically told him, Look, that surgery is not going to happen  
8 while you're in custody. If he does not have that surgery, he  
9 will become paralyzed. He already is losing feeling in his  
10 hands and in his feet. He has a burn on his left arm now  
11 because he was in the shower, could not tell that it was way  
12 too hot, and he burned himself. He needs to be released to  
13 have that surgery.

14 That is, sort of, the overriding concern --

15 THE COURT: So I know you've indicated that this is an  
16 emergent situation.

17 In terms of documentation for that, what are  
18 you -- what are you directing me to?

19 MR. KIRBY: The medical records that I have provided,  
20 Your Honor.

21 THE COURT: Okay. So I'm looking at those. And I see  
22 some -- some notes about the reasons for the visit, and the  
23 diagnosis being cervical radiculitis. But I'm not, I guess,  
24 seeing a reference to "he will be paralyzed unless he has  
25 surgery immediately" or anything in the kind of dire category

1 as you have described it. And I'm not challenging your proffer  
2 necessarily. I'm just looking for support for it in the  
3 records themselves.

4 MR. KIRBY: And what the records do say is that he has  
5 spinal stenosis. That's what it says in there. And you're  
6 right, Your Honor, it does not say in there that, yes, if he  
7 doesn't have immediate surgery, he is going to become  
8 paralyzed. I'm just passing along what has been told to him by  
9 two different doctors.

10 They had said initially within five years, when he  
11 was -- when he was more recently seen by a doctor at University  
12 of Southern California in San Diego, they told him, Look it,  
13 you need this surgery now. You -- you sneeze wrong, you are  
14 jostled wrong, you could become paralyzed immediately.

15 And, Your Honor, quite frankly, if there was any -- if  
16 I thought there was a decent chance that he would have  
17 corrective surgery while in custody, this would be a whole  
18 different case. But it's not. And -- and I have been  
19 practicing in various different jurisdictions since 1995, and  
20 to have some sort of complex surgery like this, is extremely  
21 unlikely.

22 THE COURT: Did Mr. Douglas have any concrete plans to  
23 have this surgery within the last five years since he learned  
24 of his diagnosis?

25 MR. KIRBY: He had not had concrete plans because it

1 was sort of a five-year off period. It was not --

2 THE COURT: Just a little curious, that all of a sudden  
3 it becomes an emergency when he is looking at detention in a  
4 very, very serious child pornography case; when he is looking  
5 at seven counts of distribution, each carrying 15 years, and a  
6 guideline range estimated at 210 months.

7 MR. KIRBY: I understand that, Your Honor. And I -- I  
8 agree with you.

9 But, honestly, Your Honor, if I didn't have a good  
10 faith belief in what I'm saying, I would not say it.

11 THE COURT: No, no, no, and I'm not trying to insinuate  
12 that there is not a good faith diagnosis in place. It's just  
13 curious as far as, you know, the timing for the emergency as  
14 it's been characterized.

15 What is your response to the discrepancy as it's been  
16 called between the statement and the sworn affidavit that he  
17 hasn't used illicit substances since 2011 and the statement to  
18 probation that he used, I think, it was cocaine around the time  
19 that the report was prepared, which would have been -- let me  
20 see here.

21 Officer Spille, do you know when the pretrial services  
22 report was prepared? Oh, December 13th; is that correct?

23 THE PROBATION OFFICER: Yes, Your Honor.

24 THE COURT: All right.

25 MR. KIRBY: My understanding -- oh, I'm sorry. Go

1 ahead.

2 THE COURT: No. I was curious if you had a response to  
3 that.

4 MR. KIRBY: My understanding, in speaking to my client,  
5 is that he -- he has been working with the homeless people  
6 probably in a way that he was -- was not well thought out, but  
7 he had been trying to help homeless people in his neighborhood.  
8 And he had purchased illicit drugs for their use; he had not  
9 used drugs himself. He has not used drugs himself since the  
10 early 2000s.

11 THE COURT: So you're maintaining that he didn't  
12 himself use illicit drugs since 2011?

13 MR. KIRBY: That is correct, Your Honor. And -- and if  
14 Your Honor wants him to test however often Your Honor wants him  
15 to test, he certainly is willing to do that as a condition of  
16 his release.

17 THE COURT: Well, I'm just not sure what to make of the  
18 fact that the pretrial services report says, quote, "The  
19 defendant stated he has also experimented with cocaine and last  
20 used days ago, but rarely uses cocaine."

21 MR. KIRBY: There is a miscommunication there,  
22 Your Honor, that I can't explain beyond what I have already  
23 said.

24 THE COURT: Okay. Now, can you educate me a little bit  
25 on this trust bond and how it operates?

1 MR. KIRBY: Yes, Your Honor. I -- they do the -- those  
2 regularly in the Southern District. And, essentially, what  
3 happens is a trust is put onto a piece of property, and so the  
4 United States becomes the lienholder. And so if -- if the  
5 defendant were to disobey a condition of bond, then that -- the  
6 government would have the ability to go ahead and forfeit that  
7 property immediately. So there is no question of additional  
8 litigation. It's forfeited to the government. That -- that's  
9 my understanding.

10 I mean, honestly, Your Honor, I usually have an  
11 investigator who puts those things together, but I --

12 THE COURT: That's at least an effective enough  
13 explanation.

14 All right. So as far as the bond that was put in place  
15 by the magistrate in California, that's \$100,000 personal  
16 surety bond secured by that trust deed. And who are the  
17 cosigners?

18 MR. KIRBY: That would be his mother, Your Honor.  
19 Actually, I take that back. Apologies. That would be his aunt  
20 because the aunt is the person who actually owns the property.  
21 I think his mother would probably also be a signer as well, but  
22 the aunt did -- it would be the aunt's property that would take  
23 the lien.

24 THE COURT: And that's where Mr. Douglas was living  
25 during the alleged offenses; correct?

1           MR. KIRBY: And that's where he would live during the  
2   pendency of this case.

3           THE COURT: What is your response to the -- to the  
4   suggestion that just -- the ties to the district inquiry are  
5   principally focused on this district? In looking at his ties  
6   to this district, there really don't appear to be any.

7           MR. KIRBY: Well, Your Honor, he does have some  
8   relatives in this -- in the Florida area, but they're -- I'm  
9   not going to say they're strong ties. I mean, he has some  
10   cousins who live in this area. But the ties I believe that are  
11   the most important ties are where he would be staying, and  
12   where he would be staying is San Diego. And the real question  
13   is: Is he going to flee? Is he going to flee that  
14   jurisdiction?

15          THE COURT: But it's really: Is he going to show up at  
16   all the hearings?

17          MR. KIRBY: Sure.

18          THE COURT: Which is, I guess, another way of saying  
19   what you just said.

20          But what can you offer the Court in terms of any degree  
21   of assurance that him in California, living in that same  
22   residence, no ties to this district, is going to show up  
23   regularly for court hearings?

24          MR. KIRBY: Well, I would note that he waived identity.  
25   He waived a hearing in the Southern District of California to



1 voluntarily be brought here. And if he does not, Your Honor  
2 certainly has the ability, through the marshals, to --  
3 you know, if he doesn't show up or if he doesn't obey, any of  
4 the conditions, Your Honor has the ability to practically  
5 instantaneously put him into custody.

6 THE COURT: Okay. So we talked a lot about the ties  
7 and the flight issues, but -- so let's shift gears just on the  
8 danger component.

9 Given the weight of the evidence and the nature of the  
10 allegation, I would like to hear a little bit from your end on  
11 that aspect, which did motivate, I think, strongly the initial  
12 order, and it wasn't really addressed in the reconsideration.

13 MR. KIRBY: Yes, Your Honor. And certainly  
14 that -- when you look at the complaint, when you look at the  
15 indictment, if you just look at those at face value, you do see  
16 an issue there. But I think the question is: Are there any  
17 conditions that you can fashion that will ameliorate that  
18 issue?

19 And I think you can. You can have him on house arrest.  
20 You can have him with an ankle monitor. You can bar any  
21 computers of any nature from being in that household and his  
22 ability to -- to access them. So I think Your Honor can  
23 fashion an order that will address those issues and make it so  
24 that, you know, even looking -- looking at those allegations on  
25 their face, he would not be able to replicate any of that sort

1 of activity.

2 THE COURT: All right. I'm just wondering if there are  
3 any additional areas that need to be addressed. Anything  
4 further you believe I should consider in making this decision,  
5 Mr. Kirby?

6 MR. KIRBY: Your Honor, the only other thing I would  
7 say, and I hate to sort of cut against myself. But if for  
8 whatever reason Your Honor does not consider bond in this case,  
9 I would ask that he -- that the Court -- I want to say  
10 order -- but strongly suggest that he see a doctor immediately,  
11 because he was told that, perhaps, in two weeks he may see a  
12 doctor, and he needs to see a doctor now. And this -- this  
13 physical situation needs to be addressed now.

14 THE COURT: And the particular type of specialist or  
15 physician that he needs to see is what?

16 MR. KIRBY: I'm trying to think. I had back surgery  
17 myself.

18 THE COURT: Orthopedic surgeon maybe?

19 MR. KIRBY: An orthopedic surgeon, I believe, yes. Or  
20 a neurologist, Your Honor.

21 THE COURT: Okay.

22 All right. I don't have any additional questions at  
23 this time. Let me see if Mr. Schiller has anything else to  
24 offer.

25 MR. KIRBY: Thank you, Your Honor.

1           MR. SCHILLER: Judge, if I may, I just wanted to add  
2 one point. And that is, in the magistrate judge's second  
3 hearing on this matter, on page 7 of the transcript, when it  
4 was suggested that one of the conditions the Court could impose  
5 be a GPS monitor, the judge says: "I don't use GPSs anymore,  
6 after the last two individuals last week cut them off, so I no  
7 longer order GPS. Either detained or bond. I don't use GPS as  
8 a condition. It's just not worth it, quite frankly."

9           So it doesn't sound like there was any middle ground  
10 for the judge. And it still is hard-pressed for the government  
11 to believe that those points that were brought up by defense  
12 counsel at the second bond hearing somehow overcame not just  
13 the presumption, but the standards for detention under theories  
14 of flight and danger to the community. So I would suggest to  
15 the Court that the only appropriate bond in this case is  
16 pretrial detention.

17           I also just wanted to point to the Court that in my  
18 appeal, I did mention one particular case in which a defendant,  
19 very similarly situated to this defendant, almost to a T, went  
20 through the exact same scenario. Bond was granted, the  
21 appellate court, being the district court, overturned that  
22 order almost identically.

23           And this Court has seen other decisions that Your Honor  
24 has handled and other judges in the Southern District of  
25 Florida, the same way under similar circumstances and

1 individuals not in such heightened levels of criminal activity.

2 Thank you.

3 THE COURT: Okay. All right. Well, having considered  
4 the matter and admitted just the limited additional exhibits  
5 filed by defendant, which consist of medical records reflecting  
6 that diagnosis and, again, having reviewed the full record and  
7 conducted an independent review, I do believe that the  
8 government's appeal is well taken, and that there are no  
9 conditions that can reasonably assure the community on the  
10 subject of danger, using a clear and convincing standard, as  
11 well as risk of flight under a preponderance standard.

12 This is a case involving a presumption, and the facts  
13 as set forth by the magistrate judge in its initial detention  
14 order, I think remain just as relevant and valid. And the  
15 additional information that was raised in the motion for bond,  
16 afterward, is really no basis to reconsider the initial  
17 detention order.

18 And even if it did qualify as new evidence, it still  
19 would not tip the scales or simply an intolerable risk in this  
20 case of both danger and risk of flight. So for those reasons,  
21 I will be granting the government's appeal.

22 I do want to say in this case that it really wasn't a  
23 close call, having looked at all of the factors. That said,  
24 the health issue is something that needs to be monitored, and  
25 so I will do what I can through BOP channels to inform them of

1 a need for a consult.

2 And if there becomes a concrete issue to address, then,  
3 Mr. Kirby, you are welcome to file a motion with the Court with  
4 any additional information. But I will do what I can to advise  
5 BOP of the need for a consultation, as I do think that is  
6 warranted.

7 Other than that, I think the appeal issue is warranted.  
8 As I said, I will be entering a written order to that effect.

9 Ms. Cassisi, there was a scheduling order entered in  
10 this case; is that correct?

11 COURTROOM DEPUTY: Yes, Your Honor.

12 THE COURT: And trial is set for when?

13 COURTROOM DEPUTY: One moment, Your Honor.

14 MR. HOWES: Judge, it's the second week of April, I  
15 believe. I'm sorry, Madam Clerk.

16 THE COURT: Thank you. Okay. All right. Well,  
17 then --

18 COURTROOM DEPUTY: April 22nd, Your Honor.

19 THE COURT: April 22nd.

20 What is the status of discovery, Mr. Schiller, and  
21 where are we, kind of, in the pretrial phase of this case?

22 MR. SCHILLER: Certainly, Judge.

23 We just had the arraignment, I believe, on Thursday of  
24 last week. So the discovery order was just entered. I plan on  
25 having discovery to the defense, hopefully, by either the end

1 of this week but most likely early next. There's a great deal  
2 of it.

3 And, unfortunately, because so much of the material  
4 involves child exploitation images and videos, we won't be able  
5 to give those to the defense. Mr. Kirby or Mr. Howes will have  
6 to come in to view that. I have preliminarily spoken with  
7 counsel about that.

8 And so we -- if, you know, the sides feel that more  
9 time is necessary, we will address that with the appropriate  
10 motions to the Court.

11 THE COURT: Okay. All right. Any other issues to  
12 raise at this time in terms of scheduling or discovery?

13 MR. HOWES: Judge, I'm going to be the one that is  
14 stuck looking at the videos. I have plans to be out of the  
15 district next week on some -- a wedding, actually, I'm going to  
16 next week, and my wife has a trial the following Monday after  
17 that in Tampa.

18 So it's going to be a couple of extra weeks that we get  
19 to the point where I think the government can have me come up.  
20 I live in Fort Lauderdale. That's not the issue. But I'm just  
21 saying the time that we can both get together. So I would like  
22 for you to keep in mind that when we come back to you, because  
23 I'm sure that we will, with respect to a trial date on this and  
24 motion practice on this.

25 THE COURT: Okay.

1           MR. HOWES: We will keep you informed, and I will make  
2     sure in the 21 order -- or 21-day notice, we will address that,  
3     and I will have addressed that before then in a manner in which  
4     we can -- you will not be confined on the 90-day, on speedy  
5     trial.

6           THE COURT: Okay. You read my mind. Yes, make sure to  
7     address any waiver issues in any motion for a continuance, and  
8     also be mindful of the date for pretrial motions if you are  
9     seeking a continuance of that deadline as well.

10          MR. HOWES: Yes, ma'am.

11          THE COURT: All right.

12          Mr. Douglas, I wish you well. I will see you at the  
13     next court hearing.

14          That is all for now. The government's appeal is  
15     granted and a written order will follow this hearing.

16          MR. KIRBY: Your Honor, just two small matters since  
17     Mr. Douglas will remain in custody. He did have a neck brace  
18     at one point, and it was taken from him. He also had an  
19     emergency asthma inhaler that was taken from him. If those  
20     items can be returned, the brace doesn't stop the progression  
21     of the disease, but it does make him more comfortable.

22          THE COURT: Okay. Thank you. I will make a note of  
23     that.

24          MR. KIRBY: Thank you.

25          THE COURT: That is all. Have a nice rest of your day.

1 (These proceedings concluded at 2:22 p.m.)

2 C E R T I F I C A T E

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6 I hereby certify that the foregoing is an accurate  
7 transcription of the proceedings in the above-entitled matter.

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9

10	<u>DATE:</u> 05-20-2024	/s/Laura Melton
11		LAURA E. MELTON, RMR, CRR, FPR
12		Official Court Reporter
13		United States District Court
14		Southern District of Florida
15		Fort Pierce, Florida

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